No. 219.

MAR 6 1902

Supreme Court of the United States

OCTOBER TERM, 1901.

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Filed Mar. 3, 1902.

THE TRAVELERS INSURANCE COMPANY,

Plaintiff in Error,

vs.

STATE OF CONNECTICUT,

Defendant in Error.

Brief of Defendant in Error.

CHARLES PHELPS,

Attorney-General for State of Connecticut.

HARTFORD PRESS:

The Case, Lockwood & Brainard Company.

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STATEMENT OF CASE.

This is an action brought in the Superior Court of Connecticut against The Travelers Insurance Company to recover a tax laid under the provision of Section 2 of Chapter 153 of the Public Acts of that State, passed in 1897, which section is as follows:

"The cashier or secretary of each corporation whose stock is liable to taxation, and not otherwise taxed by the provisions of this title, shall, on the first day of October, annually, or within ten days thereafter, deliver to the Comptroller a sworn list of all its stockholders residing without this State on said day, and the number and market value of the shares of stock therein then belonging to each; and shall on or before the twentieth day of October, annually, pay to the State one and one-half per centum of such value; and if any such cashier or secretary shall neglect to comply with the provisions of this section he shall forfeit to the State one hundred

dollars, in addition to said one and one-half per centum so required to be paid."

The defendant filed an answer (p. 5 of the record) which was objected to, and the defendant then filed a substituted answer, found on page ten of the record, which sets up as a defense in substance, that this tax was laid upon the shares of stockholders of said corporation who were citizens of other states, and that the tax so laid on the stock of such nonresidents was larger than the tax laid upon the stock of residents in Connecticut. It is further alleged that the corporation had large investments in real estate, and by another statute passed in 1889 the value of such real estate was to be deducted from the market value of the stock in levying the tax on stock of residents, but was not so deducted in levying the tax laid on the company which represented a tax on the stock of nonresidents. Said statute is as follows:

"Shares of the capital stock of any bank, national banking association, trust, insurance, investment, turnpike, bridge, or plank road company, owned by any resident in this State, shall be set in his list, at its market value in the town in which he may reside; but so much of the capital of any such company as may be invested in real estate, on which it is assessed and pays a tax, shall be deducted from the market value of its stock, in its return to the assessors."

It is not directly alleged, but it is to be inferred, that this deduction is what is referred to as making the excess complained of, although the language is broad enough to cover any inequality in the taxes laid upon stock of residents and that of nonresidents, arising from any cause whatever.

This substituted answer was demurred to, substantially upon the ground that the stock of residents of this State were by law assessed in and taxed by the cities, towns, and other municipal organizations where they lived, at such rates as were fixed by the various municipalities, and at such values as were fixed by the respective assessors therein, while the stock of nonresidents was assessed at a specific amount and taxed at a definite percentage by the state; and the fact that

such state tax on the stock of nonresidents was not the same as that which was imposed by the various municipalities where residents lived, was immaterial.

This demurrer was sustained in the Superior Court *pro forma*, and the defendant took an appeal to the Supreme Court of Errors of the State, and filed therein as the reason, that the act in question was contrary to the 2d section of Article IV of the Constitution, and of the fourteenth amendment thereto. This claim was overruled in the Supreme Court of Errors, and the defendant brought this writ of error; and by its assignments of error set up the two above named provisions of the Constitution of the United States. In each of these it is substantially provided that citizens of one state shall not be deprived of "the privileges and immunities" of citizens of other states.

The questions in the case are: first, whether it is one of the "privileges and immunities" of every citizen of the United States, having property in a state where he does not reside, to have such property taxed there exactly as similar property belonging to residents is taxed; and, second, if he has such privilege in general, does this act deprive him of it.

POINTS.

1. The law whose constitutionality is now attacked has been on the statute books of the State of Connecticut since 1866 (Chapter XXIX of the Public Acts of 1866). For more than thirty years the Travelers Insurance Company (together with other insurance companies, and all national and state banks), has without question paid taxes to the State on the value of its stock owned by nonresidents. The only substantial change in the law for thirty years has been the raising of the rate in 1897 from one per cent. to one and one-half per cent., and no one of the corporations affected has claimed that this change affects the validity of the statute. The question raised before this court is, therefore, whether the act passed in 1866, and ever since accepted as valid by

all concerned, is to be now found to violate the constitution of the United States.

It may be admitted that the system of taxation adopted by the State of Connecticut is not absolutely equal and uniform. But no system of taxation ever adopted anywhere has attained ideal equality and uniformity. There are all sorts of difficulties encountered by law-makers which render impracticable any near approach to ideal justice. In Connecticut the endeavor is made, in a general way, to require all property to share the burdens of taxation. For practical reasons, however, different kinds of property are got at for the purposes of taxation in different ways. Stock in corporations is generally not taxable, but this is because the corporations themselves pay taxes on all their property in the towns in which they are located, or in which their property is situated. Banks and insurance companies are not thus taxed, but their stock held in Connecticut is made subject to taxation in the towns, etc., in which the holders of the stock reside. If all the stock were held by residents of Connecticut, the whole capital of these corporations would thus be taxed in the hands of the various stockholders in the towns in which they dwell. If, however, Connecticut legislation stopped here, nearly all bank and insurance stock would soon come to stand in the names of residents of other States, and the capital invested in these great financial corporations would escape all substantial contribution to the needs of the State which created and protected them. Accordingly, the legislature has provided that banks and insurance companies shall pay a tax for the use of the State upon that part of their capital stock held by nonresidents and therefore not taxed in the towns, cities, and school districts of Connecticut. The amount of tax payable by residents varies in the different towns, cities, and school districts. In some cases it is less per share than that payable by nonresidents, and in other cases it is more per share. Certainly the amount of tax levied by the State on that part of the capital stock of banks and insurance companies held by nonresidents is not in any way oppressive or

unfair, nor such as to prove an intention of the legislature to throw unduly heavy burdens on nonresidents. In reality the shares of nonresidents now bear a much lighter weight of taxation than they would practically bear if these banks and insurance companies were taxed directly on their assessable property, like other corporations, and like individuals generally.

The policy of taxation as adopted by Connecticut, and enforced by the municipal authorities, is thus expressed by its Supreme Court: —

"The main burden of taxation for municipal purposes falls upon inhabitants of towns proportionally to their ability to contribute to public burdens. Their ability to contribute is determined by lists, prepared under authority of each town, setting to each inhabitant certain sums, according to rules more or less arbitrary, fixed by the legislature. The gross amount of these sums measures the ability of each inhabitant to pay, and taxes are imposed by all municipal corporations authorized to lay taxes, upon the individuals according to their ability to pay thus measured. The rule of measurement was formerly largely arbitrary, but as now fixed by the legislature is substantially the present fair market value of property owned, both real and personal. This rule of taxing inhabitants of towns as individuals according to their ability to contribute, measured by legislative rules, was adopted in 1650, and still prevails as to municipal taxation and to a limited extent as to state taxation. Yale University vs. New Haven, 71 Conn., 316, 330. When in later years local business came to be carried on by corporations, rather than by individuals or partnerships, a similar rule was applied in taxing such corporations. When banks were first chartered, in 1792, a different rule became necessary as to them, which has since been applied to other corporations of similar character whenever chartered. As the burden of municipal taxation fell on towns, and as the inhabitants of a large number of smaller towns were proportionally less able to bear their burden than those of larger towns,

the legislature sought to give these smaller towns, in the preparation of their tax list, the benefit of all property that could be considered as increasing the ability of their inhabitants to pay; and this desire to relieve small towns from a practically unfair share of burden has influenced our whole system of taxing corporations. While banks were located generally in the larger towns their property was equitably owned by individuals, resident in many other towns, and so, instead of taxing the banks directly, the shares of their stock were treated as distinct personal property and were listed to the individual owners in the towns of their residence." State of Connecticut vs. The Travelers Insurance Company, 73 Conn. Report, 266.

The complaint of the defendant is, that nonresident owners of stock are not taxed in the same manner or to the same amount as residents. If there was a uniform tax on the stock of all residents of Connecticut, and a larger tax was imposed on the stock owned by nonresidents, there might be more color for such a claim, but the fact is not so.

There is no uniformity in the taxation of shares of this company owned by residents of this state. Not only do the assessors of each town or other municipality fix their own valuation of the stock, but each municipality fixes the percentage of tax to be laid upon such value. The city of Hartford, spending money largely for public improvements, lays a tax of twenty or thirty mills on the dollar on such stock owned by a resident, while a smaller town, more economical in spending money, may lay a tax of no more than five or ten mills on the dollar upon the stock held by its residents. The rate may not be the same in any two towns of the State; if it is, it is merely accidental.

This method of taxation renders it absolutely impossible for the same rule to be applied to the taxation of the stock of nonresident owners as to resident owners, because there is no uniform rule as to the latter.

Under these circumstances the only way of taxing the stock of nonresidents was to do as the legislature has done,

to fix a certain definite percentage. That might be more or might be less than the tax on the stock of residents, but it certainly was not "a clear and hostile discrimination" against nonresidents.

But it is said that residents have a deduction made on account of real estate of the company, while nonresidents do not. No doubt the legislature took this difference into consideration in fixing the per cent. of the tax, and considered that, on the whole, that per cent. was as near the average tax paid by residents, after such deduction was made, as it was possible to determine. At any rate, it is not possible for this court in view of the situation to say that it was not so.

Whether the expression "privileges and immunities of citizens of the several states" does or does not include a right of citizens of other states to be taxed in exactly the same manner as citizens of Connecticut on this stock, a question which will be considered hereafter, it clearly appears that the citizens of Connecticut do not have the right of paying a uniform tax upon stock of the defendant company; some of them pay more than others, depending on the place where they reside, the market value of the stock fixed by the assessors, and the amount of tax levied by the municipalities in which they reside. If citizens of Connecticut have no such privilege, it cannot be held that nonresidents holding this stock are deprived of a privilege which citizens of Connecticut have.

2. It is further submitted that even if the case were otherwise it is well settled that equality of taxation is not a privilege or immunity within the meaning of the constitutional provisions referred to.

2. This Court says, in State Railroad Tax Cases, 92 U. S., 575, 612:

> "Perfect equality and perfect uniformity of taxation as regards individuals or corporations or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the sys-

tem which most nearly attains this is the best. But the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect. And when we come to its application to the property of all the citizens, and of those who are not citizens, in all the localities of a large State like Illinois, the application being made by men whose judgment and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature and of the evidence on which human judgment is founded."

Concerning the rate of taxation, this Court declares in the case of Adams Express Company vs. Ohio, 165 U. S., 194, 228, as follows:

> "We are also unable to conclude that the classification of express companies with railroad and telegraph companies as subject to the unit rule denies the equal protection of the laws. That provision in the Fourteenth Amendment was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways, nor was that amendment intended to compel a State to adopt an iron rule of equal taxation."

In Tappan vs. Merchants' National Bank, 19 Wallace, 490, 504, this Court says that:

> "Absolute equality in taxation can never be obtained. That system is the best which comes the nearest to it. The same rules cannot be applied to the listing and valuation of all kinds of property. Railroads, banks, partnerships, manufacturing associations, telegraph companies, and each one of the numerous other agencies of business which the inventions of the age are constantly bringing into existence require different machinery for the purposes of their taxation. The object should be to place the burden so that it will bear as nearly as possible equally upon all. For this purpose different systems adjusted with reference to the valuation of different kinds of property are adopted. The courts permit this."

In Pacific Express Company vs. Seibert, 142 U. S., 339, 351, this Court says:

> "This court has repeatedly laid down the doctrine that diversity of taxation both with respect to the amount imposed and the various species of property selected, either for bearing its burdens or for being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms; and that a system which imposes the same tax upon every species of property, irrespective of its nature or condition or class, will be destructive of the principle of uniformity and equality in taxation, and of a just adaptation of property to its burdens."

In Bell's Gap Railroad vs. Pennsylvania, 134 U. S., 232, 237, this Court says:

> "The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the state, in framing their constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject that would

> include all cases. They must be decided as they arise. We think that we are safe in saying that the Fourteenth Amendment was not intended to compel the state to adopt an iron rule of equal taxation."

It is submitted that the method of taxation now complained of, which has existed unchallenged in Connecticut for a generation, is not "a clear and hostile discrimination against particular persons and classes," and especially that it cannot be said to be a discrimination "of an unusual character, unknown to the practice of our governments."

That the above language of the United States Supreme Court represents its matured opinion appears from the late case of Merchants, etc., Nat. Bk. *vs.* Commonwealth of Pennsylvania, 167 U. S., 461, 464. In this case the court says:

> "This whole argument of a right under the Federal Constitution to challenge a tax law on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in Bell's Gap R. R. Co. *vs.* Pennsylvania, 134 U. S., 232."

We are not dealing here with a statute which makes a different rule of taxation for citizens of other states who have come within the State's jurisdiction, from that in force for citizens of Connecticut. Citizens of other states and citizens of the United States who are resident in Connecticut are treated by the statute in question precisely as are citizens of the latter State. They are taxed in the towns of the state where they reside precisely as are our citizens of Connecticut there residing. But so long as the State does not deny to any persons who come within its jurisdiction equal treatment in the matter of taxation with its own citizens similarly situated, its laws are not obnoxious to the Civil Rights Act nor to the provisions of the Constitution of the United States.

> Yick Wo *vs.* Hopkins, 118 U. S., 356, 369.
> State *vs.* Travelers Ins. Co., 70 Conn., 590, 600.

If the citizens of each state are entitled to all the privileges and immunities of the citizens in the several states, and

if no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, it is pertinent to inquire what constitutes "privileges and immunities." This Court has defined what they are. They are said to be the civil rights belonging to all citizens of the State; rights which are general and fundamental.

Corfield *vs.* Coryell, 4 Wash. C. C., 371, 380.
Slaughter House Cases, 16 Wall., 76.
Blake *vs.* McLung, 172 U. S., 239, 248.

In defining the phrase "privileges and immunities," the Supreme Court of the United States has said through Mr. Justice Peckham in the case of Maxwell *vs.* Dow, decided February 26, 1900, that the "cases show the meaning which the courts have attached to the expression, as used in the Fourth Article of the Constitution, and the argument is not labored which gives the same meaning to it when used in the Fourteenth Amendment."

The principle is discussed in Corfield *vs.* Coryell, *supra*, as follows:

"What are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature fundamental; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by the citizens of the several states which compose this Union from the time of their becoming free, independent, and sovereign.

What these fundamental principles are it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads:

Protection by the government; the enjoyment of life and liberty; with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety,

subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole."

Corfield *vs.* Coryell, 4 Washington C. C., 371.
Slaughter House Cases, 16 Wallace, page 76.

The constitutional provisions concerning the privileges and immunities secured to citizens of each state in the several states "did not create those rights which it called privileges and immunities of the citizens of the states. It threw around them in that clause no security for the citizen of the state in which they were claimed or exercised. Nor did it profess to control the power of the state governments over the rights of its own citizens. Its sole purpose was to declare to the several states that, whatever those rights as you grant or establish them to your own citizens, or as you limit or qualify or impose restrictions on their exercise, the same neither more or less shall be the measure of the rights of citizens of other states within your jurisdiction."

Slaughter House Cases, 16 Wall., 77.

"Privileges and immunities" are the rights which the State governments were created to establish and secure. Special privileges enjoyed by citizens in their own state are not secured by the provisions of Section 2, Paragraph 1, of Article 4 of the Constitution.

Paul vs. Virginia, 8 Wallace, 168, 180.

The Fourteenth Amendment did not increase the "privileges and immunities" of the citizen of a state; it only gave him an additional guarantee for the protection of those he already had.

Minor vs. Happisett, 21 Wallace, 162, 170. United States vs. Cruikshank et al., 92 U. S. Reports, 542, 552.

Section 2, Article 4, of the Constitution was intended "to confer on the citizens of the several states a general citizen-

ship and to communicate all the privileges and immunities which the citizens of the same state would be entitled to under the like circumstances."

Maxwell vs. Dow, 176 United States Reports, 581, 592.

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

"The meaning and effect of this language in substantial particulars is settled. It is confined to the single purpose of preventing an exercise of the independent power left to each State in favor of its own citizens in respect to their common personal rights as citizens, and against a participation in the same rights by citizens of other states."

State of Conn. vs. The Travelers Insurance Co., 73 Conn. Reports, 272.

The alleged infringement of the rights of a nonresident stockholder in the case at bar is explained when we examine the ground upon which those rights are predicated.

The right so strenuously urged is not a privilege or immunity which springs from his national citizenship. As a citizen of the United States he has certain rights arising from the limitations which the Federal Constitution may have imposed upon the states, but the right that all taxation should be equal and uniform within the jurisdiction of the states is not one of those rights.

It must therefore be conceded that, if he does not possess this right purely as a citizen of the United States, the provisions of the Fourteenth Amendment of the Federal Constitution which prohibits any state from abridging the privileges or immunities enjoyed by him as such citizen do not accord to him the immunity which he now claims.

He invokes the aid of the Fourteenth Amendment as a citizen of the United States when the rights which he alleges to have been infringed are not based upon national citizenship.

Maxwell vs. Dow, 176 U. S. Reports, 595, 596.

In the above case an information was filed by a prosecuting attorney in Utah charging the accused with robbery; he was tried before a jury composed of eight jurors and was sentenced to imprisonment. He subsequently applied to the Supreme Court of Utah for a writ of habeas corpus, alleging among other things that his imprisonment was unlawful, because he was prosecuted under an information instead of by an indictment by a grand jury, and was tried by eight instead of twelve jurors.

He claimed that as a citizen of the United States his privileges and immunities as such citizen, and granted him by the Constitution, were and had been abridged. The proceeding by information, and also the trial by a jury of eight instead of twelve, were provided for by the Utah Constitution.

The Supreme Court of the State denied the petition for habeas corpus and an appeal was taken to the Supreme Court of the United States, which affirmed the decision of the Court of Utah.

The case discusses at some length the meaning of the words "privileges" and "immunities" as used in the Constitution, and traces the source from which the phrase originated, reaching the conclusion that they are in their nature fundamental, and that they may all be comprehended under the following heads:

"Protection by the government—the enjoyment of life and liberty, with the right to acquire and possess property of every kind and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole."

Continuing this discussion the few expressed limitations which the Federal Constitution imposes upon the States are declared to be such as the prohibition against the ex post facto laws, bills of attainder, and laws which impair the obligation of a contract.

After illustrating the nature of these limitations the opinion of the Court, continuing the discussion, says: "But

with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States, and without that of the Federal Government."

"Was it the purpose of the Fourteenth Amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned from the States to the Federal Government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States? All this and more must follow if the proposition of the plaintiff in error be sound. For not only are these rights subject to the control of Congress whenever in its discretion any of them are supposed to be abridged by State legislation, 'but that body may also pass laws in advance, limiting and restricting the exercise of legislative power by the States in their most ordinary and useful functions as in its judgment it may think proper on all such subjects.'"

It was suggested in the discussion that such a course might constitute the Supreme Court of the United States "a perpetual censor upon all legislation of the States."

In the above discussion the opinion quotes largely from previous cases in which Mr. Justice Washington and Mr. Justice Miller wrote the opinion.

Maxwell *vs.* Dow, 176 U. S. Reports, 589, 590.

The Travelers Insurance Company is a corporation chartered by the State of Connecticut. Its power to do business along the peculiar lines incident to its purpose emanates from the authority given it by the legislature. It is a creature of the State and exercises its privileges thereby. All this is admitted, but the contention is made that citizens

of other States and of the United States, by reason of their residence, are deprived of certain privileges. They are however in no true sense deprived of any privilege or abridged of any immunity; a benefit lost or gained may be simply an incident of residence. They chose to live in one State and possess property interests in another. In accepting property rights or interest in the State of Connecticut they place themselves voluntarily under the jurisdiction of the State and under the provisions of its laws.

The discrimination, if any exists, is therefore not a hostile one but a mere "incident of legitimate taxation."

The Court in discussing the question of depriving the owner of his property without due course of law, makes a significant statement that the judgment "may violate some provisions of the State Constitution against unequal taxation, but the Federal Constitution imposes no restraints on the States in this regard."

Davdison *vs.* New Orleans, 96 U. S. Report, 105.

If this be sound and in accord with existing law, then neither Article 4 nor the Fourteenth Amendment of the Constitution secures to citizens of the several States or of the United States, absolute uniformity in taxation.

The decisions which hold that the Federal Constitution imposes no such restraint upon the States are based upon the experience which teaches that absolute and exact uniformity and equality in the system of taxation is a positive impossibility.

It is admitted that in the assessment and collection of taxes absolute uniformity and equality cannot be attained. This is apparent in the attempt to tax shares of a National Bank in a given case where its share-holders are residents of different States.

"It is said to be a violation of the constitutional rule of uniformity to compel the owner of a bank share to submit to taxation for this part of his property at a place other than

his residence because other residents are taxed for their personal property where they reside.

"It is a sufficient answer to this proposition to say that all persons owning the same kind of property are taxed as he is taxed."

Tapan *vs.* Merchants National Bank, 19 Wallace, 504.

There is no equal and uniform clause concerning taxation contained in the Constitution of Connecticut. A large number of the States have constitutions containing such a provision. It is now contended that the Fourteenth Amendment supplies such a deficiency, and by implication therefore all taxation is to be uniform and equal, and that thereby the power of taxation is limited. There is, however, no such provision in the Constitution of the United States affecting or limiting the powers of the State in its enactment or enforcement of its laws of taxation. "One of the most satisfactory answers to the argument that the uniformity required by the Constitution is the same as the equal and uniform clause which has since been embodied in so many of the State constitutions results from a review of the practice under the constitution from the beginning.

"From the very first Congress down to the present date in laying duties, imposts, and excises, the rule of inherent uniformity, or in other words, intrinsically equal and uniform taxes, has been disregarded, and the principle of geographical uniformity consistently enforced.

"Take, for a general example, specific import duties, by which particular specific rates are imposed on enumerated articles without reference to their value.

"It is manifest that all such duties are void if intrinsic equality and uniformity be the rule; and yet in all the great controversies which have arisen over the policy of impost duties generally, and particularly as to the economic wisdom of specific duties, never has it been contended that the power

to impose them did not exist because of the uniformity clause of the Constitution."

Knowlton vs. Moore, U. S. Supreme Court Report. 178 United States Reports, 41, 92–93.

"Taxes, to be both uniform and equal, affecting each inhabitant in proportion to his ability to contribute, can only be devised by a government unhampered by the limitations of humanity. With the complications of civilized society, the stress of taxation is not, and cannot be, confined to the individual who pays the tax; its ramifications are widespread and hidden."

State of Conn. vs. The Travelers Insurance Co., 73 Conn. Reports, 261.

"Direct taxes shall be apportioned among the several states which may be included within this union, in proportion to the census directed to be taken. By this positive mandate any rule of equality in laying direct taxes is rendered impossible. The citizens of different states, if thus taxed at all, must be taxed unequally. 'All duties, imposts, and excises shall be uniform throughout the United States.' This mandate is plainly geographical, demanding uniformity of rate in all places, but not uniformity of operation, and practically forbids the effort to secure uniformity of operation in laying indirect taxes. And so by force of specific commands the theory that equality and uniformity are essential to taxation is ignored."

Ibid., page 263.

The simple fact that a tax is excessive, or that it may bear more heavily upon one class of corporations than upon another, does not thereby render the same unconstitutional.

Veazie Bank vs. Fenno, 8 Wall., 533–548.

The question concerning the right of a state government to classify for the purposes of taxation and to make discrimi-

nations in the operation of the taxing law, based upon reasonable grounds, is discussed by this Court in the case of the American Sugar Refining Company vs. the State of Louisiana, decided November 5, 1900.

179 U. S. Supreme Court Reports, 89, 94.

It was there contended that the State of Louisiana by a provision of its constitution, followed by an enactment of the General Assembly, denied to the defendant the equal protection of the laws, "inasmuch as said act did not impose equally a license tax upon all persons engaged in the business of refining sugar and molasses, but discriminates in favor of planters who refine their own sugar and molasses, and in favor of planters who granulate syrups for other planters during the rolling season."

The trend of the opinion demonstrated that the law in question was not unconstitutional, because the discrimination was not "purely arbitrary, oppressive or capricious, and made to depend upon differences of color, race, nativity, religious opinions, political fluctuations or other considerations having any possible connection with the duties of citizens as taxpayers."

It was pointed out that Congress had acted upon the principle which was the objectionable feature of the Louisiana statute, and that an incidental discrimination based upon reasonable grounds in a tax law which had for its purpose the providing of expenses of the government was not unconstitutional.

In a discussion it lays down the principle that if the law chooses "it may exempt certain classes of property altogether; may impose different specification classes upon different trades or provisions; may vary all rates of excise upon various products; may tax real and personal estate in a different manner; may tax visible property only and not securities; may allow or not allow deductions for indebtedness.

"All such regulations and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature or the people of the State in framing their constitution."

The contention of the plaintiff in error in the present controversy is that a deduction is not allowed a resident of a sister State which is allowed a resident of Connecticut for the purpose of assessment and taxation.

In the case quoted a deduction for the purposes of assessment and taxation may be allowed for indebtedness. In the case at bar a deduction is allowed for such purpose of so much of the capital stock as is "invested in real estate on which it is assessed and pays a tax."

It is entirely proper that that part of the real estate invested in capital and which of itself pays a tax should be exempted from further taxation. All persons coming to reside within the State of Connecticut partake of the privileges of the State law, but it is submitted that nonresidents who acquire property of or an interest in a Connecticut corporation take such property subject to any restriction or limitation which the sovereign State sees fit to impose with its grant of power.

RECAPITULATION.

1. The law whose constitutionality is now under discussion has been in force for more than thirty years.

2. There is no express provision contained in the State constitution that taxation shall be uniform and equal.

3. The United States Constitution does not by the Fourteenth Amendment thereto supply such an omission.

4. "There is no fundamental principle of free government or natural justice that all taxation shall be uniform and equal."

5. Non-residents who acquire property in a Connecticut corporation take the same subject to the limitation and restrictions imposed with the grant of power.

6. "Privileges and immunities" bear the same interpretation as expressed in paragraph 1, section 2, Article 4, as in the Fourteenth Amendment of the Constitution.

7. "Privileges and immunities" are the civil rights which are general and fundamental.

8. They were not increased by the Fourteenth Amendment but were additionally guaranteed thereby.

9. The Constitution does not add to those already enjoyed by the citizens of the several states.

10. Equality and uniformity of taxation is not required or practiced except geographically by the United States government.

11. Absolute uniformity and equality in the process of taxation is impossible and therefore not made imperative by our fundamental law.

12. Citizens of Connecticut have no privilege or right to uniform taxation upon the stock in question.

13. An approximation to this standard is all that is expected.

14. Only a hostile discrimination will be condemned.

15. The present discussion turns upon an incident of taxation and residence and therefore cannot be said to be hostile in discrimination.

CHARLES PHELPS,
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